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BEFORE THE ARIZONA CORPORATION COMMISSION

GARY PIERCE
Chairman

BOB STUMP
Commissioner

SANDRA D. KENNEDY
Commissioner

PAUL NEWMAN
Commissioner

BRENDA BURNS
Commissioner

Arizona Corporation Commission

DOCKETED

SEP 15 2011

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IN THE MATTER OF THE APPLICATION
OF COX ARIZONA TELCOM, L.L.C.
TARIFF FILING TO ADD/REVISE MAX
RATES

DOCKET NO. T-03471A-10-0498

DECISION NO. 72580

ORDER

Open Meeting
September 6 and September 7, 2011
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. Cox Arizona Telcom, L.L.C. ("Cox" or "Company") is certificated to provide intrastate telecommunications service as a public service corporation in the State of Arizona.

2. On December 15, 2010, Cox filed revisions to its Local Exchange Service Tariff to increase maximum recurring and non-recurring rates for residential and business services.

3. Although Arizona Corporation Commission ("Commission") approval of the proposed tariff revisions would authorize Cox to increase its customers' rates, Cox does not propose to increase any rate that it currently charges any of its customers at this time.

4. In Decision No. 60825, dated July 2, 1997, the Commission concluded that the local exchange company and intraLATA/interLATA services which Cox provides are competitive pursuant to Arizona Administrative Code ("A.A.C.") R14-2-1108 of the Commission's Competitive Telecommunications Services Rules. A.A.C. R14-2-1108 contains the requirements necessary for the determination of a Competitive Telecommunications Service. Therefore, the pricing and rate change provision of A.A.C. R14-2-1109 and A.A.C. R14-2-1110 apply to changes

1 in either the price levels or maximum rates for services provided by Cox. A.A.C. R14-2-1109
2 allows Cox to price a competitive telecommunications service at any level at or below the
3 maximum rate stated in the company's tariff on file with the Commission, provided that the price
4 for the service is not less than the company's total service long-run incremental (marginal) cost of
5 providing the service. Pursuant to A.A.C. R14-2-1110, Cox is required to submit the following
6 information in order to increase the maximum rates for a competitive telecommunications service:

- 7 A. A statement setting forth the reasons for which a rate increase is required;
- 8 B. A schedule of current rates and proposed rates and the additional revenues to be
9 derived from the proposed rates;
- 10 C. An affidavit verifying that appropriate notice of the proposed rate increase has been
11 provided to customers of the service;

12 5. In its December 15, 2010 filing, Cox proposes to increase maximum recurring and
13 non-recurring rates for 217 residential and business services. Cox does not propose to increase any
14 recurring and non-recurring rate that it currently charges its customers at this time

14 Background

15 6. On January 6, 2011, Staff issued its First Set of Data Requests. On March 1, 2011,
16 Staff issued its Second Set of Data Requests. On March 3, 2011, Staff issued its Third Set of Data
17 Requests. In all cases, Cox provided appropriate data responses and also responded with
18 supplemental information to informal requests. Direct discussions were held between Staff and
19 Cox on February 25, 2011 and March 22, 2011, regarding Customer Notice options and estimated
20 annual revenue impacts corresponding to the proposed maximum increases.

21 7. In its March 16, 2011 filing, Cox amended its application in its entirety to correct
22 pagination issues. Its filing did not amend its original proposal to increase maximum recurring and
23 non-recurring rates for 217 residential and business services.

24 8. In its April 21, 2011 filing, which replaces its previous filings, Cox amended its
25 application to increase maximum recurring and non-recurring rates for 80 residential and business
26 services rather than the 217 services proposed in its December 15, 2010 filing. Cox does not
27 propose to increase any recurring and non-recurring rate that it currently charges its customers at
28 this time.

1 9. Business customers would be impacted by proposed maximum recurring and non-
2 recurring rate increases for four services. Residential customers would be impacted by proposed
3 maximum recurring and non-recurring increases in 61 services. Fifteen additional services for
4 which it seeks maximum recurring and non-recurring rate increases are offered to both Residential
5 and Business customers:

6 10. In response to Staff's First and Third Set of Data Requests, Cox explained that
7 approval of the proposed maximum recurring and non-recurring rate increases was being sought
8 for two reasons:

9 A. The primary reason is the Commission's pending review and possible revision of
10 the Arizona Universal Service Fund ("AUSF") and Intrastate Access Rates (Docket
11 Nos. RT-00000H-97-0137 and T-00000D-00-0672) that is expected to result in a
revenue reduction equaling several million dollars that can only be recovered by
price rebalancing.

12 B. Cox requires increased pricing flexibility to effectively respond to key competitive
13 segments which either have more flexible tariff pricing or are not regulated by the
Commission and therefore have no pricing limitations.

14 11. However, Staff disagrees with the Company's primary reason for the filing. The
15 Commission has not issued a Decision in the consolidated AUSF/Access docket and, at this point,
16 Staff and certain of the telecommunications companies have only recommended changes that may
17 require a revision of rates. In addition, Cox acknowledges that it currently has little flexibility to
18 revise its rates because most of its services are priced at their maximum rates. Therefore, Staff has
19 concluded that approval of the proposed tariff revisions by the Commission should be based on
20 Cox's existing need for increased pricing flexibility rather than a future need related to intrastate
21 access rate reductions that could be ordered by the Commission.

22 Staff Analysis

23 12. Staff notes that the number of services and customers impacted by Cox's proposed
24 maximum recurring and non-recurring rate increases constitute the most comprehensive rate
25 change application filed by a competitive local exchange carrier ("CLEC") in Arizona. Cox's
26 Local Exchange Service Tariff contains the terms and conditions for approximately 746 local
27 exchange services. This filing by Cox, as amended on April 21, 2011, therefore, proposes
28 maximum recurring and non-recurring rate increases that will impact approximately 11 percent of

1 its local exchange services and possibly the entire Cox residential customer base. However, the
2 impact on business customers is limited.

3 13. Cox states in its responses to Staff's First and Third Data Requests that Staff has
4 recommended a reduction of intrastate access rates by all Incumbent Local Exchange Carriers
5 ("ILECs") and CLECs to a level no higher than Qwest Corporations' (now CenturyLink, Inc.)
6 current intrastate rates. Staff also recommended that ILECs and CLECs offset revenue
7 deficiencies through price adjustments in local exchange services.¹ Staff also recommended that
8 ILECs be required to demonstrate a need to offset reductions in access revenues through rate case
9 filings.² Rates for services classified as competitive by the Commission are not set according to
10 rate of return regulation standards. However, CLECs have other means of recovering reductions in
11 access revenues. Staff stated that "CLECs and Cox already have pricing flexibility that will allow
12 them to increase other rates to make up for lost switched access charge revenues. The
13 Commission is likely to give the CLECs time upfront in which to make any compliance filings.
14 To the extent they need to increase any maximum rate levels, they may make filings with the
15 Commission which will take time to resolve."³ While Cox states its support for an access
16 reduction transition plan that allows carriers cost recovery, it notes that "Cox's current tariff
17 structure does not allow for sufficient flexibility in order for it to recover the amount of lost
18 revenue it will ultimately incur as a result ... As access rates are ratcheted downward, Cox may
19 need to make changes to its rates for it to be able to offset revenue deficiencies."⁴

20 14. In support of its need for pricing flexibility to compete effectively, Cox states "For
21 the past 13 years, Cox has been providing telecommunications services to customers in the
22 Arizona market. Cox first launched its residential telephone services in 1998 and launched its Cox
23 Business services in 2000. When Cox first prepared and filed its original tariff back in 1997 at the
24

25 ¹ Arizona Universal Service Fund, RT-00000H-97-0137, and Generic Investigation Regarding the Costs of
26 Telecommunications Access T-00000D-00-0672; Direct Testimony of Wilfred Shand, January 8, 2010; Hearing
27 Testimony of Wilfred Shand, Volume III, March 18, 2010.

28 ² Reply Brief of Commission Staff, September 14, 2010, Arizona Universal Service Fund, RT-00000H-97-0137, and
Generic Investigation Regarding the Costs of Telecommunications Access T-00000D-00-0672

³ Reply Brief of Commission Staff, September 14, 2011, Arizona Universal Service Fund, RT-00000H-97-0137, and
Generic Investigation Regarding the Costs of Telecommunications Access T-00000D-00-0672

⁴ Cox Response to Staff's First Set of Data Requests

1 time it received its CC&N, it did not establish maximum rates that were higher than its offered
2 rates for many of its services, both for residential and its business offerings. This has resulted in a
3 lack of flexibility to adjust rates in a timely manner in response to changes in markets or costs. For
4 example, approximately 85% of Cox's residential products and services are priced in its tariff at
5 the maximum rate. Absent a specific rate filing, Cox has no flexibility to increase such pricing
6 until the Commission approves a higher rate or a higher maximum rate. Filing individual requests
7 is a time-consuming and burdensome process. Cox would prefer to address all of its rates in this
8 one filing in order to avoid multiple filings at the Commission as rates may need to be adjusted."⁵

9 15. In its response to Staff's First Set of Data Requests, and subsequent updates, Cox
10 provided information allowing Staff to compare the proposed Cox maximum recurring and non-
11 recurring rate increases against ILEC and CLEC maximum recurring and non-recurring rates. Of
12 the 80 proposed Cox maximum recurring and non-recurring rate increases, 63 are less than or
13 equal to the maximum recurring and non-recurring rates currently approved by the Commission
14 for some ILECs⁶ or CLECs⁷. This is not conclusive as there are variances in ILEC and CLEC
15 rates. However, Staff's analysis does suggest that Cox's proposed maximum rates are not
16 unreasonable when viewed against ILEC and CLEC competitors and Staff's understanding of the
17 general telecommunications market.

18 16. Staff and Cox participated in several discussions concerning the notices of the
19 proposed rate increases that would be sent to residential and business customers. Cox agreed to
20 issue explanatory customer notices, of two paragraphs in length, informing customers of the
21 application filed with the Commission and directing customers to Cox websites for detailed
22 information regarding the proposed maximum recurring and non-recurring rate increases.
23 Customers unable to use the Cox websites were able to receive paper copies of the proposed
24 maximum recurring and non-recurring rate increases by contacting Cox using information

25 ⁵ Cox Response to Staff's First Set of Data Requests

26 ⁶ Arizona Telephone Company, Copper Valley Telephone, Inc, Qwest Corporation

27 ⁷ ACN Communication Services, Inc, Airespring, Inc, Arizona Dialtone, Inc, Citynet Arizona, LLC, Eschelon
28 Telecom of Arizona, Inc, Excel Telecommunications, Inc., Level 3 Communications, LLC, McLeodUSA
Telecommunications Services, LLC, Mountain Telecommunications of Arizona, Inc, PaeTec Communications, Inc.,
SBC Telecom Inc., Southwestern Telephone Company, XO Communications Services, Inc, YMax Communications
Corp.

1 provided in the customer notice. Cox expects to complete issuance of all customer notices on
2 July 31, 2011.

3 Staff Conclusions

4 17. Cox states that the “primary reason” for the proposed maximum increases in this
5 matter is related to Cox’s need to recover revenue losses which will be realized when the
6 Commission issues an order in the Arizona Universal Service Fund Rules and Investigation of the
7 Cost of Telecommunications Access matter (Docket Nos. RT-00000H-97-0137 and T-00000D-00-
8 0672). However, an intrastate access rate reduction has not been ordered by this Commission and
9 the potential impact of such a reduction when ordered is estimated, by Cox⁸, to be relatively minor
10 compared to the total potential annual revenue impact of all maximum rate changes proposed in
11 this matter. Staff re-enforces its position that approval by the Commission of the proposed
12 maximum rate increases in this matter should be based on Cox’s existing need for increased
13 pricing flexibility rather than a future need related to an access reduction that could be ordered by
14 the Commission.

15 18. Cox’s response to Staff’s First Set of Data Requests holds merit – “... as
16 technology continues to change, Cox is operating with increasing competition from a variety of
17 different carries and service providers, many of whom are either unregulated by this Commission,
18 or do not file rates for their telecommunications and voice information services. Today,
19 consumers can choose from many differing technologies to receive their telecommunications
20 needs. Competitors such as the local incumbent Qwest (soon to be CenturyLink), VoIP (Voice
21 over the Internet Protocol) carriers like Vonage and Magic Jack, and even wireless providers like
22 AT&T, Verizon and Sprint, are all competing for customer’s telecom business. While VoIP and
23 wireless carriers are not subject to any pricing restrictions or requirements to file rates with the
24 ACC, Cox is subject to its current pricing limitations. Cox needs to have the flexibility to react
25 timely in order to adjust its pricing beyond its current structure. Cox believes that a rate review is
26 warranted in that it has not sought such review in over 13 years.”

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28 ⁸ Confidential Cox response to Staff’s Third Set of Data Requests

19. Analysis by Staff reveals that the 18 services with proposed maximum rate increases of more than 300 percent are not exorbitant when compared against the approved rates for other ILECs and CLECs. Thirteen of the 18 services are actually below the approved maximum rates of two key competitors – Qwest Corporation (now CenturyLink, Inc.) or AT&T Communications of the Mountain States, Inc. (“AT&T”). Staff concludes, therefore, that the proposed maximum recurring and non-recurring rate increases are fair and reasonable.

20. Staff has reviewed the proposed maximum recurring and non-recurring rate increases and believes they are comparable to the rates charged by ILECs and CLECs operating in the State of Arizona. The rates ultimately charged by Cox will be heavily influenced by the market. Cox will not be raising the actual or current rates corresponding to the 80 services in this application, therefore, the initial market impact will be zero. While Staff considered the fair value impacts of the proposed maximum recurring and non-recurring rate increases, the fair value was not given substantial weight in this analysis. Staff concludes that the proposed maximum recurring and non-recurring rate increases are fair and reasonable within the competitive environment present in Arizona. There are local exchange service alternatives that are available to end-users.

21. Staff also concludes that the use of abbreviated paper customer notices in this application linked to tariff information available at Cox websites emphasizes the importance of making all tariffs available online for use by customers and the general public. Online availability of approved tariffs utilized by ILECs and CLECs, such as Qwest and Cox, improve the competitive situation by ensuring information accuracy combined with rapid access.

Staff Recommendations

22. Staff recommends approval of this filing with the following conditions:

- A. That copies of all written complaints received by Cox within 90 days of a decision in this matter be provided to the Commission as soon as possible but not later than 120 days following a decision in this matter.
- B. That Cox not seek additional maximum rate increases related to a Commission decision ordering access reductions in the Arizona Universal Service Fund Rules and Investigation of the Cost of Telecommunications Access (Docket Nos. RT-00000H-97-0137 and T-00000D-00-0672) matter.

1 C. That online access be available for all Cox Arizona Telcom, L.L.C. tariffs within
2 120 days of a decision in this matter.

3 CONCLUSIONS OF LAW

4 1. Cox Arizona Telcom, L.L.C. is a public service corporation within the meaning of
5 Article XV of the Arizona Constitution.

6 2. The Commission has jurisdiction over Cox Arizona Telcom, L.L.C. and the subject
7 matter in this filing.

8 3. The Commission, having reviewed the filing and Staff's Memorandum dated
9 August 9, 2011, concludes that the proposed tariff revisions as discussed herein are reasonable, fair
10 and equitable and therefore in the public interest.

11 ORDER

12 IT IS THEREFORE ORDERED that proposed tariff revisions be and hereby are approved
13 as discussed herein.

14 IT IS FURTHER ORDERED that copies of all written complaints received by Cox
15 Arizona Telcom, L.L.C. within 90 days of a decision in this matter be provided to the Commission
16 as soon as possible but not later than 120 days following a decision in this matter.

17 IT IS FURTHER ORDERED that Cox not seek additional maximum rate increases related
18 to a Commission decision ordering access reductions in the Arizona Universal Service Fund Rules
19 and Investigation of the Cost of Telecommunications Access (Docket Nos. RT-00000H-97-0137
20 and T-00000D-00-0672) matter.

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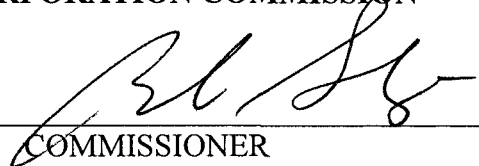
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1 IT IS FURTHER ORDERED that online access be available for all Cox Arizona Telcom,
2 L.L.C. tariffs within 120 days of a decision in this matter.

3 IT IS FURTHER ORDERED that this Decision shall be become effective immediately.

4
5 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

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CHAIRMAN

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COMMISSIONER

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11 **EXCUSED**
COMM. NEWMAN

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13 COMMISSIONER

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15 COMMISSIONER

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COMMISSIONER

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19 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
20 Executive Director of the Arizona Corporation Commission,
21 have hereunto, set my hand and caused the official seal of
22 this Commission to be affixed at the Capitol, in the City of
23 Phoenix, this 15th day of September, 2011.

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26 ERNEST G. JOHNSON
27 EXECUTIVE DIRECTOR

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